

AMENDED IN ASSEMBLY APRIL 29, 1998

AMENDED IN ASSEMBLY APRIL 20, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 2764

**Introduced by Committee on Public Employees, Retirement
and Social Security (Honda (Chair), Migden, Scott, Shelley,
and Wildman)**

February 26, 1998

~~An act to amend Sections 22825.5, 75030.5, and 75076 of, to add Sections 20523, 31470.13, and 53213.5 to, and to~~ *An act to amend Sections 22825.5 and 22859.2 of, to add Sections 20530.1, 31470.13, 53213.5, and 75030.7 to, and to add Article 1.5 (commencing with Section 53620) to Chapter 4 of Division 2 of Title 5 of, the Government Code, relating to public employee retirement systems.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2764, as amended, Committee on Public Employees, Retirement and Social Security. Public employee retirement and health benefits.

(1) The Public Employees' Retirement Law authorizes local governmental agencies to contract for participation in the retirement system.

The bill would authorize contracting agencies to provide service credit for their employees' prior services.

(2) The Judges' Retirement Law authorizes a judge to purchase service credit for service as an elected state constitutional officer before becoming a judge.

This bill would authorize purchase of service credit as a federal judicial officer, as defined.

(3) The Public Employees' Medical and Hospital Care Act authorizes certain specified local agencies to amend their contracts respecting employer health benefit contributions for postretirement health benefit coverage.

This bill would make those provisions also applicable to all other contracting agencies on and after January 1, 1999.

(4) Existing law authorizes local governmental agencies to establish deferred compensation plans for their officers and employees.

This bill would require those plans to conform to the requirements of the federal Small Business Job Protection Act of 1996 (P.L. 103-188), and would authorize individually directed investments under specified circumstances.

(5) Existing law authorizes local agencies to invest moneys belonging to, or in the custody of, those agencies, but limits the kind of those investments, as specified.

This bill would exempt the investment of funds designated for the payment of employee retiree health benefits from those limitations and would prescribe fiduciary standards for those investments.

(6) The County Employees Retirement Law of 1937 provides that various county officers and employees are eligible for safety membership.

This bill would authorize county boards of supervisors to include officers and employees whose functions clearly fall within the scope of hazardous materials services within safety membership.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section ~~20523~~ 20530.1 is added to the
2 Government Code, to read:
3 ~~20523.~~

1 20530.1. An agency whose contract provides for
2 participation of its employees in this system on a
3 prospective basis may request the employees' service,
4 with the contracting agency, prior to the date the
5 employees became members of this system, be credited
6 under this system. If the employees were or are members
7 of a local retirement system and received service and
8 contribution credits under that local retirement system,
9 credit in this system may be granted if the system
10 administrator certifies that the local system may be
11 transferred, and if a two-thirds majority of the affected
12 employees vote in favor of the transfer.

13 This section shall apply only to members employed by
14 the contracting agency on the effective date of the
15 amendment to the contract in which the contracting
16 agency elects by amendment to its contract to be subject
17 to the provisions of this section. Any cash and securities
18 to the credit of the local retirement system and held on
19 account of affected employees shall be transferred to this
20 system as of said effective date. The board may make
21 arrangements with the agency for the transfer of assets,
22 other than an amount equal to the total member
23 contributions, over an appropriate period following the
24 effective date of the contract, if it finds that transfer as of
25 the effective date is not possible without hardship to the
26 agency.

27 This section shall not apply to any contracting agency
28 unless and until the agency elects to be subject to the
29 provision of this section by amendment to its contract
30 made in the manner prescribed for approval of contracts;
31 ~~or in the case of contracts made after the effective date~~
32 ~~of this section, by express provision in the contract~~
33 ~~making the contracting agency subject to the provisions~~
34 ~~of this section.~~

35 SEC. 2. Section 22825.5 of the Government Code is
36 amended to read:

37 22825.5. (a) A contracting agency may amend its
38 contract to provide that subdivision (c) of Section 22825.3
39 is applicable to employees who retire for service and who
40 are first employed after the operative date of the

1 amendment if the contract is amended to contain the
2 following provisions:

3 (1) The employer's contribution for each officer,
4 employee, or annuitant shall be based upon the principles
5 prescribed for state officers, employees, or annuitants in
6 Section 22825.1.

7 (2) The employer has, in the case of employees
8 represented by a bargaining unit, reached an agreement
9 with that bargaining limit to be subject to this section for
10 the period specified in that memorandum of
11 understanding.

12 (3) The employer certifies to the board, in the case of
13 employees not represented by a bargaining unit, that
14 there is no applicable memorandum of understanding.

15 (4) The credited service for purposes of determining
16 the percentage of employer contributions applicable
17 under this section shall mean service as defined in Section
18 20069, except that not less than five years of that service
19 shall be performed entirely with that employer.

20 (5) The employer agrees to provide the board any
21 information requested necessary to implement this
22 section.

23 (b) This section shall apply to the Calaveras County
24 Water District, the Alameda County Water District, the
25 City of Fontana, and the City of Lincoln.

26 (c) On and after January 1, 1999, this section shall also
27 be applicable to all other contracting agencies which
28 have not amended their contracts to be subject to this
29 section.

30 SEC. 3. *Section 22859.2 of the Government Code is*
31 *amended to read:*

32 22859.2. (a) Notwithstanding any other provision of
33 this part, the Santa Monica Community College District
34 and the Mt. San Antonio Community College District and
35 their respective employees' exclusive representatives
36 and unrepresented employees may agree that the
37 employer contribution payable by the contracting
38 agency for postretirement health benefit coverage shall
39 be subject to the following:

1 (1) Credited years of service that the employee
2 worked with the contracting agency.

3 (2) A memorandum of understanding regarding
4 postretirement health benefit coverage mutually agreed
5 to through collective bargaining. This issue shall not be
6 subject to the impasse procedures set forth in Article 9
7 (commencing with Section 3548) of Chapter 10.7 of
8 Division 4 of Title 1.

9 (b) No agreement reached pursuant to subdivision (a)
10 shall be valid if it imposes separate postretirement health
11 benefit coverage vesting requirements on employees in
12 the same category and doing similar job duties.

13 (c) This section shall not be applicable to any
14 employee who has retired before the effective date of the
15 memorandum of understanding agreed to by the
16 contracting agency and the employees' exclusive
17 representative and unrepresented employees. In the
18 event that the memorandum of understanding
19 establishes a retroactive effective date, this section shall
20 apply only prospectively and any employee who retires
21 before the memorandum of understanding is signed shall
22 not be affected by it.

23 (d) No agreement reached pursuant to subdivision (a)
24 shall be valid if it provides for employer contributions
25 with respect to employees with less than five years of
26 credited service with the district.

27 (e) The contracting agency shall provide to the board
28 in the manner prescribed by the board a notification of
29 the agreement established pursuant to this section and
30 any additional information necessary to implement this
31 section.

32 (f) *On and after January 1, 1999, this section shall also*
33 *apply to all other school employers that have not*
34 *amended their contracts to be subject to this section.*

35 SEC. 4. Section 31470.13 is added to the Government
36 Code, to read:

37 31470.13. Officers and employees whose function
38 clearly fall within the scope of hazardous materials
39 services are eligible.

1 This section shall not be operative in any county until
2 the time as the board of supervisors shall, by resolution
3 adopted by a majority vote, make this section applicable
4 in the county.

5 ~~SEC. 4.~~

6 SEC. 5. Section 53213.5 is added to the Government
7 Code, to read:

8 53213.5. (a) Each deferred compensation plan
9 established pursuant to this article shall conform with the
10 requirements promulgated under the federal Small
11 Business Job Protection Act of 1996 (Public Law 103-188).
12 Those requirements include, but are not limited to, the
13 holding of ~~plan assets~~ *assets in a plan that complies with*
14 *Sections 401(a), 401(k), and 457 of the federal Internal*
15 *Revenue Code* in trust for the exclusive benefit of
16 employees.

17 (b) Notwithstanding any other provision of law,
18 participants choosing individually directed investments
19 shall relieve the trustee and local agency of responsibility
20 under the terms of the plan and trust. That relief shall be
21 conditioned upon the local agency compliance with
22 communication and education requirements similar to
23 those prescribed in subdivision (c) of Section 1104 of Title
24 29 of the United States Code for private sector employers.

25 ~~SEC. 5.~~

26 SEC. 6. Article 1.5 (commencing with Section 53620)
27 is added to Chapter 4 of Division 2 of Title 5 of the
28 Government Code, to read:

29
30 Article 1.5. Health Fund Investments

31
32 53620. Notwithstanding Section 53601 or 53635, the
33 governing body of a local agency may invest funds
34 designated for the payment of employee retiree health
35 benefits in any form or type of investment deemed
36 prudent by the governing body pursuant to Section
37 53622.

38 53621. The authority of the governing body to invest
39 or to reinvest funds intended for the payment of
40 employee retiree health benefits, or to sell or exchange

1 securities purchased for that purpose, may be delegated
2 by the governing body to designated officers.

3 53622. (a) Funds intended for the payment of
4 employee retiree health benefits shall only be held for the
5 purpose of providing benefits to participants in the
6 retiree health benefit plan and defraying reasonable
7 expenses of administering that plan.

8 (b) The governing body or designated officer, when
9 making investments of the funds, shall discharge its duties
10 with respect to the investment of the funds.

11 (1) Solely in the interest of, and for the exclusive
12 purposes of providing benefits to, participants in the
13 retiree health benefit plan, minimizing employer
14 contributions thereto, and defraying reasonable expenses
15 of administering the plan.

16 (2) With the care, skill, prudence, and diligence under
17 the circumstances then prevailing that a prudent person
18 acting in a like capacity and familiar with these matters
19 would use in the conduct of an enterprise of a like
20 character and with like aims.

21 (3) Shall diversify the investments of the funds so as to
22 minimize the risk of loss and to maximize the rate of
23 return, unless under the circumstances it is clearly
24 prudent not to do so.

25 ~~SEC. 6. Section 75030.5 of the Government Code is~~
26 ~~amended to read:~~

27 ~~75030.5. Any judge who first becomes a judge on or~~
28 ~~after May 1, 1962, and who has served as an elected state~~
29 ~~constitutional officer or as a federal judicial officer before~~
30 ~~becoming a judge, or any judge who first became a judge~~
31 ~~prior to that date who has served as a constitutional officer~~
32 ~~or as a public legal officer before becoming a judge, has~~
33 ~~a right to elect, by written election filed with the Judges'~~
34 ~~Retirement System at any time prior to retirement, to~~
35 ~~make contributions pursuant to this section for, and~~
36 ~~receive credit in this system as, service for all or any part~~
37 ~~of the time he or she served as that officer, excluding any~~
38 ~~period of time for which the judge is receiving, or is~~
39 ~~entitled to receive, a retirement allowance from any~~
40 ~~other public retirement system.~~

~~As used in this chapter, the term “elected state constitutional officer” means the holder of the office of Member of the Senate or Assembly, Governor, Lieutenant Governor, Secretary of State, Controller, Treasurer, Attorney General, Superintendent of Public Instruction, or member of the State Board of Equalization.~~

~~As used in this chapter, the term “constitutional officer” means the holder of an office created by the California Constitution, and “public legal officer” means the holder of any legal office of the state or any agency of the state or of any county or city in the state who is paid a salary or other fixed regular compensation and who is admitted and licensed to practice law in the State of California during the time of holding the office and whose principal duties in the office are legal in nature, such as the Attorney General, Legislative Counsel, Commissioner of Corporations, a district attorney, county counsel, city attorney, city prosecutor, public defender, or a deputy of any such office, or a secretary to the Governor whose duties include the hearing of extradition matters, admitted and licensed to practice law in the State of California during the time of holding the office and whose principal duties in the office are legal in nature. As used in this chapter, the term “federal judicial officer” means federal justice, federal judge, and federal magistrate judge.~~

~~Every judge electing to receive credit for service pursuant to this section shall at the time of filing his or her election, and as a condition to receiving that credit, pay into the Judges’ Retirement Fund a sum equal to the amount which would have been deducted from his or her salary and paid into that fund pursuant to Section 75102 had he or she been a judge during the time for which he or she elects to receive credit for service, computed by applying the rates of deduction applicable to judges’ salaries during that time to the rate of salary the judge actually received during the first year as a judge, plus interest at 3 percent a year, to the date of his or her payment, upon the amounts of the deductions and from~~

1 ~~the respective dates they would have been paid had he or~~
2 ~~she been a judge during the time for which he or she~~
3 ~~elects to receive credit for service. The amount and~~
4 ~~interest shall be determined by the Judges' Retirement~~
5 ~~System in accordance with this section. Funds transferred~~
6 ~~to the Judges' Retirement Fund pursuant to Section~~
7 ~~9356.5 shall be deducted from the payment. Any funds so~~
8 ~~transferred which are in excess of the amount required by~~
9 ~~this section shall be refunded to the judge.~~

10 ~~This section shall not apply to any person who, on or~~
11 ~~after January 1, 1986, first becomes or continues as an~~
12 ~~elected state constitutional officer, in a term which~~
13 ~~commences on or after January 1, 1986.~~

14 ~~SEC. 7. Section 75076 of the Government Code is~~
15 ~~amended to read:~~

16 ~~75076. (a) A judge who qualifies, as prescribed in~~
17 ~~Section 75075, to receive the benefits accorded by this~~
18 ~~article shall receive a retirement allowance equal to 65~~
19 ~~percent of the salary payable, at the time payment of the~~
20 ~~allowance falls due, to the judge holding the judicial office~~
21 ~~to which he or she was last elected or appointed; except~~
22 ~~that if upon retirement a judge has received credit for 20~~
23 ~~or more years of service rendered prior to the expiration~~
24 ~~of the time within which the judge is eligible to elect to~~
25 ~~receive the benefits accorded by this article and for which~~
26 ~~he or she has contributed to the Judges' Retirement Fund~~
27 ~~his or her retirement allowance shall equal 75 percent of~~
28 ~~that salary or if he or she retires pursuant to Section 75060~~
29 ~~after or while serving in a term of office subsequent to the~~
30 ~~term of office in which he or she attained the age of 70;~~
31 ~~his or her retirement allowance shall equal 50 percent~~
32 ~~unless he or she elects an actuarially reduced allowance~~
33 ~~based on his or her life and that of his or her spouse as~~
34 ~~provided under Section 75070.~~

35 ~~(b) Any judge retiring after July 7, 1960, who has or~~
36 ~~shall become entitled to credit for service as a judge of a~~
37 ~~court of record prior to the inclusion of the judges of those~~
38 ~~courts, or of all of those courts, under the Judges'~~
39 ~~Retirement Law, or as a "judge of an excluded court" as~~
40 ~~defined by Section 75029, or as a "constitutional officer"~~

~~1 or “public legal officer” or “federal judicial officer” as
2 defined by Section 75030.5, without having contributed
3 therefor to the Judges’ Retirement Fund, may at any time
4 prior to retirement contribute for all or any part of that
5 service by paying into the fund a sum of money computed
6 by applying to the rate of salary which he or she actually
7 received during his or her first year of service as a judge
8 the rate of deduction first applicable to his or her salary
9 as a judge after the inclusion of the judges of his or her
10 court under the Judges’ Retirement Law, multiplied by
11 the period of service for which contributions are elected
12 to be made, plus interest at 3 percent a year to the date
13 of his or her payment upon the amounts of the deductions
14 and from the respective dates they would have been
15 made if he or she had been the holder of a judicial office
16 subject to the provisions of the Judges’ Retirement Law
17 at the time of the rendition of the services for which he
18 or she has received or hereafter receives that credit.~~

~~19 The amount of any contribution authorized by this
20 subdivision and interest thereon shall be determined by
21 the Judges’ Retirement System in accordance with this
22 subdivision.~~

~~23 (e) If the judge retires pursuant to Section 75025, the
24 allowance is payable during the remainder of his or her
25 life; if pursuant to Section 75060, it is payable as provided
26 in Section 75060.6.~~

~~27 SEC. 7. Section 75030.7 is added to the Government
28 Code, to read:~~

~~29 75030.7. Any judge has a right to elect, by written
30 election filed with the Judges’ Retirement System at any
31 time prior to retirement, to make contributions pursuant
32 to this section for, and receive service credit in this system
33 for all of the time he or she served as a federal judicial
34 officer, excluding any period of time for which the judge
35 is receiving, or is entitled to receive, a retirement
36 allowance from any other public retirement system.~~

~~37 As used in this section, the term “federal judicial
38 officer” means federal justice, federal judge, and federal
39 magistrate judge.~~

1 *Every judge electing to receive credit for service*
2 *pursuant to this section shall at the time of filing his or her*
3 *election, pay into the Judges' Retirement Fund a sum*
4 *equal to actuarial present value of the increase in benefit*
5 *due to the additional service. The amount shall be*
6 *determined by the Judges' Retirement System in*
7 *accordance with this section.*

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